HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO.20630 OF 2000

Between:

Smt. Illeni Lasumavva

. . .Petitioner

AND

Union of India and another

. . .Respondents

Counsel for the petitioner : Shri Y.Rama Rao

Counsel for the respondent No.1 : Shri A.Rajashekar Reddy, Assistant Solicitor General

Counsel for the respondent No.2 : Government Pleader for Revenue

Dated: 8th August, 2006

: ORDER :

In this petition, Smt. Illeni Lasumavva, wife of late Shri Chandraiah has prayed for issue of a mandamus to the respondents to grant pension to her under Swatantrata Sainik Samman Pension Scheme, 1980 (for short, 'the 1980 Scheme') in pursuance of the recommendations made by the State Government vide letter No.39189/FF.II/A1/95 dated 25.11.1997.

In the affidavit filed by her, the petitioner has averred that her husband went under ground on 17.12.1356 Fasli and remained under ground up to 06.07.1357 Fasli and even though this fact was confirmed in the enquiry conducted by District Collector, Karimnagar, the Government of India has not entertained her claim for grant of pension. Along with the affidavit, the petitioner has annexed copy of letter dated 25.11.1997 sent by Secretary to Government, Revenue (FF) Department, Andhra Pradesh to Deputy Secretary to Government, Ministry of Home Affairs (Hyderabad Freedom Fighters Cell), New Delhi.

In the counter-affidavit filed by Sri S.D.Kaushik, Under Secretary in the Ministry of Home Affairs, reference has been made to the provisions contained in the 1980 Scheme and the judgment of the Supreme Court in **M.L.BHANDARI v. UNION OF INDIA**[1] and it has been averred that the petitioner's claim for grant of pension was rejected after due consideration of the documents sent by the Government of Andhra Pradesh. According to Shri S.D.Kaushik, the petitioner had failed to produce the copy of arrest warrant duly verified

by the State Government, pursuant to which, her husband is said to have suffered under ground and therefore, she was not treated eligible to receive pension under the 1980 scheme. Along with his affidavit, Shri S.D.Kaushik had placed on record copy of the 1980 Scheme and communication dated 10.10.2001 sent by the Government of India to the petitioner rejecting her claim for grant of pension.

I have heard learned counsel for the parties.

Paragraphs 2 to 2.3 of the 1980 scheme framed by the Government of India for grant of pension to the freedom fighters, read as under:

"2. **Who is eligible for Samman Pension:-**

All the persons who participated in the freedom movement in some way or the other are not eligible for Samman Pension. Only following category of freedom fighters are eligible for the Samman Pension under the Scheme subject to furnishing of the specified evidences:-

2.1 **Eligible dependents of martyrs:-**

A martyr is a person who died or who was killed in action or in detention or was awarded capital punishment due to participation in the freedom struggle of India. Relevant documents from official records and newspapers of the relevant time are considered as evidences in such cases.

2.2 **Imprisonment:-**

A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:-

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of

admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the certifier happens to be a sitting or Ex. M.P./M.L.A., only one certificate in place of the two is required.

2.3 **Underground:-**

A person who on account of his participation in freedom struggle remained underground for more than six months provided he was;

A. a proclaimed offender; or

B. one on whom an award for arrest was announced; or

C. one for whose detention, order was issued but not served.

Explanation:

Voluntary underground suffering or self-exile suffering for party work under command of the party leaders, are not covered as eligible sufferings for pension under the Central Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence:-

(a) Documentary evidence by way of Court's / Govt.'s orders proclaiming the applicant as an absconder, announcing an

award on his head or for his arrest or ordering his detention.

OR

(b) In case records of the relevant period are not available, secondary evidences in the form of a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered provided the State Government / Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available.

A conjoint reading of the above reproduced provision makes it clear that freedom fighters pension is admissible only to the one who is eligible in terms of paragraph 2 read with paras 2.1, 2.2 and 2.3 of the 1980 Scheme.

The petitioner's claim for grant of pension was rejected by the Government of India on the premise that she had failed to produce copy of arrest warrant duly verified by the State Government showing that her husband had remained under ground for more than six months i.e. between 17.12.1356 Fasli (23.09.1947) and 06.07.1357 Fasli (12.04.1948). The petitioner has neither challenged letter dated 10.10.2001 nor she has filed any document to substantiate her assertion that her husband had remained under ground pursuant to arrest warrant issued by the competent authority. It must, therefore, be held that the decision of the Government of India not to entertain her claim for pension does not suffer from any legal infirmity.

For the reasons stated above, the writ petition is dismissed.

G.S.SINGHVI, CJ

Date: 08.08.2006

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[1] AIR 1993 SC 2127